

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LEV GRIGORYOU,

Plaintiff,

v.

ORDER
13-CV-526

PALLET SERVICE INC.,

Defendant.

The above-referenced case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. §636(b)(1)(B). Plaintiff, who is proceeding *pro se*, filed a motion to appoint counsel. (Dkt. No. 9) Defendant filed a motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt. No. 6) On February 14, 2014, Magistrate Judge McCarthy issued a Report, Recommendation and Order denying, without prejudice, plaintiff's motion for appointment of counsel, and recommending that defendant's motion to dismiss the complaint be granted, without prejudice to plaintiff filing an amended complaint.

Plaintiff filed objections on April 3, 2014. (Dkt. No. 15) Defendant responded on April 14, 2014, (Dkt. No. 16), at which time the Court considered the matter submitted.

Pursuant to 28 U.S.C. §636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which

objections have been made. Upon *de novo* review, and after reviewing the submissions of the parties, the Court adopts the proposed findings of the Report, Recommendation and Order.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report, Recommendation and Order, plaintiff's motion for appointment of counsel is denied without prejudice. Defendant's motion to dismiss is granted, without prejudice to plaintiff filing an amended complaint. Plaintiff shall file an amended complaint on or before June 2, 2014. If an amended complaint is not filed by that date, the Clerk of the Court is instructed to close the case.

SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: May 2, 2014